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U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
DETROIT, MICHIGAN

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1946

DETROIT & WINDSOR FERRY COMPANY
a Michigan corporation,

Petitioner,

vs.

FRED L. WOODWORTH, Individually and as Former
Collector of Internal Revenue of the United States of
America, for the First District of Michigan,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SIXTH CIRCUIT AND
BRIEF IN SUPPORT THEREOF

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**PETITION FOR WRIT OF CERTIORARI TO
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APPEALS FOR THE SIXTH CIRCUIT**

To the Honorable Supreme Court of the United States:

The Detroit & Windsor Ferry Company, petitioner herein, respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit to review the judgment of that Court entered in this case on November 13, 1940, and therefore shows as follows:

I. SUMMARY STATEMENT OF MATTER INVOLVED

The record in the Circuit Court of Appeals, Sixth Circuit, a certified copy of which is presented herewith, shows no conflict of evidence, the defendant having introduced no evidence at the trial.

This is a suit to recover Federal income taxes paid under protest for the calendar years 1929 and 1930.

Petitioner is a Michigan corporation, and during the years 1929 and 1930, and for many years prior thereto, was engaged in operating ferries across the Detroit River between Detroit, Michigan, and Windsor, Canada (R. 33, 34). In connection with its ferry business, petitioner then owned and operated, simultaneously, four specially constructed ferry boats in connection with its ferry terminals and docks which included special ferry equipment consisting of superstructures with overhead landings to take care of a four boat service and to permit the handling of all foot passengers from the upper decks of the boats and automobiles from the lower decks (R. 34).

In June, 1927, the Ambassador Bridge Company was granted a franchise to build and operate a bridge across the Detroit River about two miles below petitioner (R. 39). Some preliminary work thereon was done in May, and the financing was announced April 9, 1927 (R. 39). August, 1930, was the time fixed for completion of the bridge. It actually opened November 15, 1929 (R. 41).

In the fall of 1927 there were substantial rumors concerning the construction of an international passenger

and vehicle tunnel under the Detroit River, a few feet from petitioner's Detroit terminal and passing under the route travelled by petitioner's ferry boats (R. 39). On January 3, 1928, petitioner was reliably advised that the tunnel had been financed (R. 39, 69-71). Shortly thereafter public announcement was made that the tunnel would be completed and opened by the end of the year 1930. It actually was completed and opened November 3, 1930 (R. 41, 46).

On approximately January 1, 1928, petitioner knew that the tunnel would be built and completed by the end of 1930, and it was then of the opinion that the construction and operation of the bridge and tunnel together would thereafter make the ferry business commercially unprofitable and that its ferry boats and special ferry equipment would have no value other than their scrap or salvage value (R. 40-1, 67-70, 73). Petitioner was abundantly justified in so concluding, and its expectations as to the effect of this new competition were fully realized (R. 44, 48, 53, 55).

In its return for the taxable year 1928, petitioner claimed a deduction from its income for obsolescence of its ferry boats and special ferry equipment of \$358,755.18. This figure was arrived at by taking the depreciated cost of these assets in 1928 (Ex. 1, R. 95) and deducting the estimated salvage value at the end of 1930 (R. 42) and spreading this amount over the years 1928, 1929 and 1930 (R. 42, 46).

The salvage value used by petitioner is admitted by respondent and there is no dispute but that it is excessive (R. 49-50, 52, 89-90).

On the audit of petitioner's return for 1928, the Government allowed an obsolescence deduction spread over a period of $4\frac{1}{2}$ years rather than 3 years. This was accepted by petitioner, and in its original return and claim for refund for 1929 and 1930 the remaining obsolescence was adjusted and spread over these years on the basis of the date on which the tunnel should actually be opened (Ex. 5, R. 97; Ex. 6, R. 115; Ex. 3, R. 13; Ex. 4, R. 19; R. 46-8).

The Government disallowed any deduction for obsolescence for 1929 and 1930, but did allow \$49,437.03 as "loss of useful value" (under Article 143 of Regulations 45) on the ferry "Pleasure" which had been taken out of service when the bridge opened (Ex. 11, R. 146; R. 73). Proper adjustment has been made by petitioner in its claim by reason of such allowance.

For 1930 and prior years, petitioner's ferry business was a very profitable one. After the opening of the tunnel there were no net earnings in spite of every effort by petitioner to reduce expenses and retain its business (R. 52-3). After 1930 the ferry boats and special ferry equipment could not be used profitably for any purpose (R. 51). The ferry boats could not be used in the excursion business and they were too large to be moved out of the Great Lakes area (R. 55-6, 91-2, 93). They could not be sold (R. 50-1). There was no other use for them on the Great Lakes (R. 51, 87). There was no other use to which the special ferry equipment could be put except the ferry service (R. 51). Such use was no longer profitable.

Petitioner, at a very substantial loss each year, continued the physical operation of the ferry business after

the end of the year 1930. Up to the time of the trial no determination had been made by it to abandon or scrap *all* the ferry boats. It did take two ferry boats out of service (resulting in the disuse of two of the four landings (R. 52)), the Pleasure upon the opening of the bridge, and the Britannia in January of 1932 (R. 53, 85). The Britannia was not disposed of but was held as a "stand-by" boat (R. 53, 79). At the time of the trial petitioner was still operating the other two ferry boats in the service. It was hoped by so doing that petitioner would be able to make a better sale of some of its other ferry assets on which no obsolescence was claimed (R. 80-86).

There is no claim that, if allowable at all, the amounts deducted were excessive or that they were not properly allocated between the two years in question.

II. BASIS UPON WHICH THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS

(a) This Honorable Court has jurisdiction to review the judgment of the Circuit Court of Appeals in this case under the provisions of Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938; Title 28 U.S.C.A. Section 347.

(b) The statute of the United States involved in this proceeding is the Act of Congress known as the Revenue Act of 1928, approved May 29, 1928 (c. 852, 45 Stat. 791), the pertinent provisions of which are set forth in the Brief annexed hereto (pages 9-10).

(c) The judgment of the Circuit Court of Appeals for the Sixth Circuit now sought to be reviewed was entered by the said Court on November 13, 1940 (R. 179), and is final and erroneous.

III. STATEMENT OF QUESTION PRESENTED

The sole question is whether petitioner is entitled, under the provisions of the Revenue Act of 1928 (c. 852, 45 Stat. 791, Sec. 23 k), to a reasonable deduction for obsolescence from its income for the taxable years 1929 and 1930 on the ground that the profitable life of its special ferry equipment and ferry boats was ended, and said assets could not be sold thereafter for more than mere salvage value, by reason of the construction and operation of a competitive bridge and tunnel, though petitioner had made no determination to abandon or scrap said assets but continued to use a part of the same.

IV. REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

(a) The decision of the Circuit Court of Appeals for the Sixth Circuit decides an important question of Federal law which has not been but should be settled by this Court.

(b) The Circuit Court of Appeals has decided a Federal question in a way probably in conflict with applicable decisions of this Court.

WHEREFORE, your petitioner prays that this Honorable Court will grant its writ of certiorari directed to said Circuit Court of Appeals for the Sixth Circuit, requiring the complete record of this cause in said Court to be certified to this Court, and that this Court will thereupon proceed to correct the errors herein complained of.

And your petitioner will ever pray, etc.

DETROIT & WINDSOR FERRY COMPANY.

By HAL H. SMITH,
Counsel for Petitioner.

JOSEPH A. VANCE, JR.,
BEAUMONT, SMITH & HARRIS,
Of Counsel.
Detroit, Michigan.
Dated January 10, 1941.